No. 87-530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JOSEPH O. FAWCETT & SONS, INC., *Et Al.*,
Petitioners,

vs.

UNION PACIFIC RAILROAD COMPANY, *Et Al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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October 27, 1987

QUESTION PRESENTED

Did Petitioners have a constitutional or statutory right to raise for the first time on appeal an argument that they failed to make to the District Court in opposing summary judgment motions that were dispositive of their claim?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-530

JOSEPH O. FAWCETT & SONS, INC., *Et Al.*,
Petitioners,

vs.

UNION PACIFIC RAILROAD COMPANY, *Et Al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

This Brief is submitted jointly by Respondents Union Pacific Resources Company (formerly Champlin Petroleum Company), Union Pacific Land Resources Corporation, and Amoco Production Company ("Respondents"), who were the appellees in the court below, in opposition to the Petition for Certiorari in this case.

Petitioners claim that the refusal of the Court of Appeals to consider a contention advanced by them with respect to a Utah state law question denied them due process of law. As shown below, that claim rests upon a wholly erroneous version of what transpired in the courts below and on a false premise that the language of the deed at issue in the Petition is different from that of the deeds of other parties. Accordingly, the Petition presents no issue that warrants review by this Court.

COUNTERSTATEMENT OF THE CASE

The Petition arises from a dispute as to the interpretation under Utah law of a 19th Century deed reservation of the "exclusive right to prospect for coal and other minerals . . . and to mine for and remove the same if found." The courts below held that this reservation created a fee estate in the minerals and was not, as the plaintiffs had argued, a revocable license. Petitioners, who had intervened in the District Court in support of the plaintiffs, argued for the first time on appeal that the interest reserved was an easement, and that the easement had been abandoned by non-development of the reserved minerals. They now claim that, by declining to address this untimely new argument, the Court of Appeals violated their Fifth Amendment rights and deprived them of their right of appeal.

These cases were brought in 1977 by Anschutz Land and Livestock Company and other large Utah landowners ("the plaintiffs") to dispute Respondents' ownership of the oil and gas underlying a portion of the Union Pacific land grant in Utah. The plaintiffs challenged the scope and effectiveness of three principal forms of mineral reservations contained in turn-of-the-century deeds from Union Pacific Railroad Company or a predecessor conveying surface rights to some 55,000 acres of Utah land-grant lands. Deeds to Wyoming land-grant lands were added by later amendment. Similar claims were litigated unsuccessfully by these plaintiffs and their affiliates in the District of Wyoming and

the Tenth Circuit, and were the subject of an unsuccessful petition for certiorari to this Court.[1]

After seven years of massive discovery, the District Court granted Respondents' motions for summary judgment as to all the forms of reservation at issue. These judgments were affirmed unanimously by the Court of Appeals. None of the plaintiffs has sought review of that decision.

Petitioners are successors in interest under a deed containing one of the three forms of Union Pacific mineral reservations challenged by the plaintiffs.[2] They petitioned to intervene in those suits five years after the suits were brought, asserting that "the questions of law involved in the plaintiff's Complaint are precisely the same as those of the proposed Complaint of the Intervenors" and that intervention should be allowed so that "identical lawsuits are avoided."[3] They also contended that they should have the benefit of the extensive litigation efforts already made on these claims by the plaintiffs.[4] The District Court allowed this belated intervention, but cautioned that the intervenors would take the case as they found it, including pending

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[1] *Union Pacific Land Resources Corp.* v. *Moench Investment Co.*, 696 F.2d 88 (10th Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983); *Thousand Peaks Ranches, Inc.* v. *Union Pacific Land Resources Corp.*, No. C79-091K (D. Wyo., Jan. 24, 1983).

See also Amoco Production Co. v. *Guild Trust*, 636 F.2d 261 (10th Cir. 1980), *cert. denied*, 452 U.S. 967 (1981); *Guild Trust* v. *Union Pacific Land Resources Corp.*, 682 F.2d 208 (10th Cir. 1982).

[2] Petitioners' complaint in intervention also relied on two deeds containing a different form of reservation, but the Petition does not seek review of the decision below as to such reservations.

[3] Memorandum in Support of Motion to Intervene, July 15, 1982, Opposition Appendix ("Opp. App"), pp. 2a-3a.

[4] Opp. App., pp. 7a-8a.

summary judgment motions that were among the motions adjudicated in the decision below.[5]

After Petitioners' intervention, Respondents filed additional summary judgment motions addressing among other things the "exclusive right to prospect" reservations contained in three of plaintiffs' deeds to Utah land. The wording of these reservations is identical to the reservation in Petitioners' deed.[6] The nature of the interest reserved by this form of reservation was extensively briefed on both sides. The plaintiffs argued that only a revocable license was reserved, and urged the court to follow a Colorado Supreme Court decision so construing this form of reservation under Colorado law. Petitioners did not brief this question separately, and at oral argument they adopted the plaintiffs' position.

The District Court concluded that Utah would not follow the aberrant Colorado decision and held that the "exclusive right to prospect" reservation gave the Respondents a fee estate in the minerals.[7] The Court of Appeals affirmed, holding that Utah would follow the majority rule, previously recognized by the Tenth Circuit, that "a reservation of an exclusive and unrestricted mining right is in effect a severance of the mineral estate from the surface estate which creates a fee simple estate in the minerals in place."[8]

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[5] Transcript of Oral Argument, Nov. 23, 1982, pp. 88-89.

[6] The reservations in plaintiffs' Utah deeds are quoted in Exhibit D to the Memorandum of the Union Pacific Defendants in support of their summary judgment motion in the District Court. Opp. App., p.10a. Petitioners' reservation is quoted on page 4 of the Petition.

[7] App., pp. A-10 to A-15.

[8] App., p. A-32, quoting *Guild Trust* v. *Union Pacific Land Resources Corp.*, 475 F. Supp. 726, 727 (D. Wyo. 1979), *aff'd*, 682 F.2d 208 (10th Cir. 1982).

On appeal, Petitioners parted company with the plaintiffs and argued for the first time that the "exclusive right to prospect" reservation created neither a fee nor a revocable license, but rather an easement. Petitioners further claimed — also for the first time — that Respondents had abandoned this easement by failing to develop the minerals. The Court of Appeals declined to consider these new questions on appeal, applying its settled rule that "new theories and issues not presented to the trial court, in the absence of extraordinary circumstances . . . ,will not be considered on appeal."[9] Petitioners do not challenge this rule, but contend that it should not have been applied to them because, so they now say, they had no opportunity to make their abandoned easement argument to the District Court.

ARGUMENT

The Petition is based entirely on the false premise that Petitioners were denied an opportunity to present their contention in the District Court. That claim is based, in turn, on the false premise that Petitioners had a unique claim, "different than that of any other plaintiff," in that theirs was the only deed containing an "exclusive right to prospect" reservation that presented a question under Utah law. (Pet. at 5.)

The reservation in Petitioners' deed is the same, word-for-word, as "exclusive right to prospect" reservations in plaintiffs' deeds. As Petitioners themselves recognized when seeking intervention below, the questions of law presented under these deeds are "precisely the same."[10] Moreover,

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[9] App. at A-32, quoting *Hanley* v. *Chrysler Motors Corp.*, 433 F.2d 708, 711 (10th Cir 1970). *See also United States* v. *Immordino*, 534 F.2d 1378, 1381 (10th Cir. 1976); *Harman* v. *Diversified Medical Inv. Corp.*, 524 F.2d 361, 365 (10th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976).

[10] *See* Opp. App., p. 2a.

contrary to the assertion of the Petition, theirs was not "the only deed in which [the] reservation clause should have been analyzed in accordance with Utah law." (Pet. at 5.) Each of the plaintiffs' deeds containing identically worded reservations likewise conveyed Utah lands and were properly interpreted by the courts below under Utah law. The summary judgment motions addressed to the plaintiffs' deeds thus squarely raised the question presented by Petitioners' claim. The motions gave Petitioners just the opportunity they sought in their petition for intervention to have their claim decided as part of the larger cases and with the benefit of the plaintiffs' extensive litigation efforts and resources.

There is no comprehensible basis for the claim that Petitioners were denied an opportunity to make whatever argument they wished to make when these issues were presented to the District Court. The legal effect of the form of reservation contained in Petitioners' deed was briefed at great length by the plaintiffs,[11] as well as in two briefs and two reply briefs filed on behalf of Respondents. As parties to the suits, Petitioners had a full opportunity to address the issues they shared in common with the plaintiffs — issues which they had been advised could be determined pursuant to summary judgment motions addressed to the plaintiffs' claims.

Petitioners not only had but exercised this opportunity. They were represented at the oral argument on Respondents' summary judgment motions in the District Court by two different law firms, and one of their counsel presented a brief argument of his own.[12] Petitioners' argument was made after the plaintiffs' counsel had addressed at length

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[11] The plaintiffs devoted nearly 50 pages of their Memorandum in Opposition (pp. 32-80) to this question.

[12] Opp. App., pp. 13a-14a.

the "exclusive right to prospect" form of reservation at issue here.[13] At that time, Petitioners' counsel expressly "join[ed] in the arguments so ably made by the plaintiffs in this case."[14]

Indeed, when Petitioners' right to advance a new and different argument on appeal was challenged by Respondents in the Court of Appeals, Petitioners did not argue that they had been denied an opportunity to make their argument in the District Court. Instead, they strenuously denied that their argument "raised new issues or questions" and characterized the contention that it did so as "patently absurd."[15] Not until they petitioned for rehearing did they advance the unfounded claim that they had been foreclosed from making their case to the District Court.

In fact, the plaintiffs, supported by Petitioners, had good reason not to argue that the reservation in question was an abandoned easement rather than a license. First, they had the support of a case in a neighboring jurisdiction for their contention that the reservation was a license, whereas no case in any jurisdiction has held that such an exclusive and unrestricted mining right is an easement.[16] Second, in Utah an easement that is exclusive would be "tantamount to

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[13] Transcript of November 1, 1983, Oral Argument, pp. 67-80.

[14] Opp. App., p. 13a.

[15] Reply Brief of Appellants Joseph O. Fawcett & Sons, Inc. in the Court of Appeals, p. 6.

[16] Contrary to the Petition, the 1895 decision in *Adams* v. *Reed* did not hold that such a reservation was an easement. 11 Utah 480, 40 P. 720 (1895), *aff'd sub nom. Adams* v. *Henderson*, 168 U.S. 573 (1897). The question in *Adams* was whether the reservation prevented the owner of the land from conveying full title, and the court held that it did. The lower court opinion did refer to an "easement" in a dictum describing the reservation, which unquestionably includes an easement for "a right of way across and over" the lands; but the question of what property interest the reservation created was not before the court.

a conveyance . . . in fee simple," and thus could not be abandoned.[17] Third, even if the reservation had been no more than an easement, under Utah law it could be abandoned only by clear affirmative acts, not by a mere failure to develop the minerals. In Utah, as in most states, easements "may not be lost by non-use alone."[18] Instead, abandonment "requires action releasing the ownership and the right to use with clear and convincing proof of an intentional abandonment."[19] Petitioners have never even alleged any such affirmative action by Respondents, and none is evidenced in the record. In the absence of abandonment, Petitioners have no greater rights if the reservation is an easement than they do under the holding below that it is a fee.

In short, had Petitioners' untimely argument been considered, it would not have affected the outcome of the case. The plaintiffs prudently chose not to undercut their license argument by advancing such an unpromising claim. Having supported that strategy, Petitioners had no right to relitigate the case on a new theory after the District Court had rejected the only argument presented to it by either plaintiffs or Petitioners.

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[17] *Weggeland* v. *Ujifusa*, 14 Utah 2d 364, 384 P.2d 590, 591 (1963).

[18] *Western Gateway Storage Co.* v. *Treseder*, 567 P.2d 181, 182 (Utah 1977). *Accord Brown* v. *Oregon Short Line R.R. Co.*, 36 Utah 257, 102 P. 740, 742 (1909).

[19] *Harmon* v. *Rasmussen*, 13 Utah 2d 422, 375 P.2d 762, 765 (1962).

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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IN THE

United States District Court

FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ANSCHUTZ LAND AND LIVESTOCK, INC.,
a corporation,

Plaintiff,

and

ANTELOPE ISLAND CATTLE CO., INC.,

Plaintiff,

vs.

THE UNION PACIFIC CORPORATION, a corporation; **UNION PACIFIC RAILROAD COMPANY,** a corporation; **CHAMPLIN PETROLEUM COMPANY,** a corporation; **UPLAND INDUSTRIES CORPORATION,** a corporation; **UNION PACIFIC LAND RESOURCES CORPORATION,** a corporation; and **AMOCO PRODUCTION COMPANY,** a corporation,

Defendants.

JOSEPH O. FAWCETT & SONS, INC., a Utah corporation; ARLO C.

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Civil No. C-77-0390
and
Civil No. C-77-0389

an alien. The Court granted the applicant's Motion to Intervene on the ground that "her claim and the main action have a question of law in common; viz., the constitutionality of the challenged statute." *Teitschied* v. *Leopold*, 342 F. Supp., at 301.

In the present action, the factual circumstances giving rise to the claims of the plaintiffs and the factual circumstances giving rise to the claims of the INTERVENORS, are, for all practical purposes in this action, identical. Furthermore, the legal issues involved in resolving the claims of the plaintiffs and the claims of the INTERVENORS are virtually identical. The proposed Complaint filed by the INTERVENORS is substantially similar to the plaintiffs' Complaint, and both Complaints involve the same defendants. Because there are similar questions of fact and because the questions of law involved in the plaintiff's Complaint are precisely the same as those of the proposed Complaint of the INTERVENORS (to the extent they involve the same claims), this Court should grant INTERVENORS' Motion to Intervene.

C. Granting the INTERVENORS' Motion to Intervene Will Not Unduly Delay or Prejudice the Rights of the Original Parties.

As noted above, the legal issues advanced in the claims of the plaintiffs and the INTERVENORS are virtually

identical. The factual circumstances giving rise to both sets of claims are similar. Both the plaintiffs and the INTERVENORS seek to quiet title to their respective parcels of real property as opposed to the claims of the defendants. The defendants' claims to interests in the respective real property owned by plaintiffs and INTERVENORS originate in reservations contained in deeds from DEFENDANT U. P. RAILROAD to the respective predecessors-in-interest of the plaintiffs and the INTERVENORS. The substantial discovery completed to date is as applicable to the claims of these INTERVENORS as to the claims of plaintiffs.

Granting INTERVENORS' Motion to Intervene will not unduly delay the primary action. No trial date has been requested or set. INTERVENORS will not need to do substantial additional discovery. If intervention is granted, this action can proceed on a normal course to its conclusion while the needs of judicial economy are met, and respective, identical lawsuits are avoided. INTERVENORS, therefore, urge this Court to grant their Motion to Intervene.

CONCLUSION

The INTERVENORS' claims have questions of law in common with the main action, and the Motion to Intervene is

IN THE

United States District Court

IN AND FOR THE DISTRICT OF UTAH

BEFORE: THE HONORABLE BRUCE JENKINS

ANSCHUTZ LAND AND LIVESTOCK COMPANY, *Et Al.*,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD COMPANY, *Et Al.*,

Defendants.

C-77-390 J

REPORTER'S PARTIAL TRANSCRIPT

November 23, 1982

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delay is this Court's inherent ability to manage its calendar so as to prevent any undue delay on the part of any party.

With regard to the prejudice, the defendants claim that they will be prejudiced by this intervention. Quite candidly, Your Honor, I'm not clear exactly how that will come about. They say the words, but it doesn't match up with the facts.

THE COURT: Well, anytime you get sued, you are prejudiced.

MR. HANSON: That's true, certainly. And if that is the prejudice they claim, I'll give them that one.

When you weigh their claim of prejudice with the beneficial effect on judicial economy which this --

THE COURT: I'm never much interested in judicial economy. It is always an interesting kind of argument. I have never really enjoyed that argument. People are always trying to save me time or save someone else time. In most litigation, you take the time that you have to take to do the best job that you can.

MR. HANSON: Sure. There is an aspect of judicial economy that relates to these defendants and to the proposed intervenors, however, that I think is important. That is the savings on a fairly small ranching family that would be -- that would enure to them by virtue of having what has gone on in this case available to them rather than having

to start all over again in a separate action. I'll limit my remarks on judicial economy to that.

The defendants also assert that by virtue of this intervention, there will be interjected into this suit additional issues which apparently they claim will somehow work to their prejudice. I think it is important to note three things in that regard, Your Honor. First, the test is not whether additional issues might be raised, but whether there are common questions of fact and of law which the defendant railroad parties simply do not dispute.

Secondly, the so-called additional issues which they refer to are, in reality, defenses which they may be asserting in this case. We are not raising those issues. We have not raised those issues. Our complaint or our proposed complaint in this matter is virtually identical to the complaint of the plaintiffs in the main action. The fact of the matter is that those are their issues, not ours.

Third, the so-called additional issues relate to three documents. Defendants have already completed substantial discovery as to each of those documents. The Court, when the appropriate time comes, can read and interpret those documents without imposing any prejudicial burden upon the defendant. It is a matter of interpreting those documents which say what they say when the time comes.

Finally and most interestingly, the railroad

IN THE

United States District Court

DISTRICT OF UTAH,
CENTRAL DIVISION

ANSCHUTZ LAND AND LIVESTOCK COMPANY, INC., a corporation,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, a corporation, *et al.*,

Defendants.

ANTELOPE COMPANY, a corporation,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, a corporation, *et al.*,

Defendants.

JOSEPH O. FAWCETT & Sons, Inc., a Utah corporation, *et al.*,

Plaintiffs in Intervention.

Civil No. C-77-0390-J
Civil No. C-77-0389-J

EXHIBITS TO MEMORANDUM IN SUPPORT OF UNION PACIFIC DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

EXHIBIT D

UTAH DEEDS CONTAINING A RESERVATION OF THE "EXCLUSIVE RIGHT TO PROSPECT FOR COAL AND OTHER MINERALS" AS FOLLOWS:

Reserving, however to the said Union Pacific Railway Company the exclusive right to prospect for coal and other minerals within and underlying said lands and to mine for and remove the same if found and for this purpose it shall have right of way over and across said lands, and space necessary for the conduct of said business thereon without charge or liability for damage therefor.

Deed Nos.

20749
22826
22926

United States District Court

DISTRICT OF UTAH
CENTRAL DIVISION

ANSCHUTZ LAND AND LIVESTOCK,
Plaintiff,

v.

UNION PACIFIC RAILROAD,
Defendant.

Case No. C 77-390

Salt Lake City, Utah

November 1, 1983
9:30 a.m.

TRANSCRIPT OF MOTION
BEFORE THE HONORABLE BRUCE S. JENKINS

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DAVID OLSEN, ESQ.
WILLIAM CAYIAS, ESQ.

November 1, 1983 9:30 a.m.

PROCEEDINGS

THE COURT: Lets go ahead in the Anschutz matter, Anschutz Land and Livestock Company, Inc. versus the Union Pacific Railroad and others. It's C 77-390. We also have 77-389 and other related matters, here today on motions. Those who are making appearances, if you'll make a record for us, tell us who you are and whom you represent.

MR. ABRAMS: Floyd Abrams representing plaintiff Anschutz Land and Livestock Company, Inc. With me are my colleagues Rodney Snow, Dean Reindel, Leonard Spivak, Robert Martin and Lee Thompson.

MR. GRIBBON: On behalf of the Union Pacific defendants, Daniel Gribbon and Russell Carpenter and Sam Gauffin.

MR. WERLIEN: Ewing Werlein, Jr. on behalf of Amoco Production Company. With me is Paige Austin, Stephen Anderson and Kent Murdock.

MR. OLSEN: David Olsen and William Cayias representing the plaintiffs in intervention, the Fawcett family.

THE COURT: Anyone else. We've got the motion to dismiss and the motion for summary judgment. Have you selected the order in which you want to speak?

MR. GRIBBON: Your Honor, if it meets with your

Radke reservations as well.

In conclusion, we don't think they all mean the same thing. We don't think they can mean the same thing. We think it is illogical and ultimately incomprehensible for the railroad to get up and tell you that every bit of language they use no matter what they added, when they added, why they added and how firmly we can establish precisely what their intention was has absolutely no relevance and we can't have a trial to prove to to you. We think Nell establishes that and the other cases we've cited establish that, and we urge you to deny the summary judgment motion. Thank you.

MR. OLSEN: Thank you, your honor. May it please the court, the Fawcett family joins in the arguments so ably made by the plaintiffs in this case. The Fawcett family owns but six sections of land contained in this litigation, four of those involve the pre-1898 language. The defendants have claimed here today as to these lands and similarly situated lands the defendants' right of ownership is clear. We submit, your Honor, that that right is far from clear either by contract or by law.

First, the defendants have no record title to the property, despite the care and page upon page of drafting specific legal descriptions for property conveyed from the railway to the railroad, nothing describes the Fawcett lands. Thus, as one performs a search of the records of the Summit

County Recorder, as to the Fawcett property no interest of the railroad company appears as of record.

Second, the railroad defendants have never paid taxes on their mineral estate in the property. And, finally, for over approximately 80 years there was no development of the property by the railroad defendants or their successors.

Your Honor, we submit that if a careful lawyer chooses to convey a property interest he specifically lists that interest, that which he intends to convey, describes the property in detail in a form that can be recorded to protect his rights and to give the public notice. The reason the careful lawyer did not do that in this case was because there was nothing to convey to the railroad. With that, your Honor, we would respectfully request a chance to submit evidence on the issues and have the case heard on the merits. We would submit it.

MR. CARPENTER:: Since what you've heard near the end of Mr. Abrams' argument are the Radke issues and related issues that I spoke to, I will try to address them briefly, and following on that principle I'll start with what I heard at the end which is freshest in my mind which is the response that Mr. Abrams made to our question of what gives the plaintiffs any basis for title or claim of title to these minerals even if you assume they're right in their argument that the railway did not effectively convey the reserve

PURSUANT TO RULE 28.1

RESPONDENTS UNION PACIFIC RESOURCES COMPANY AND UNION PACIFIC LAND RESOURCES CORPORATION

Bear Creek Uranium Company
Black Butte Coal Company
Camas Prairie Railroad Company
Carbon County Coal Company
Corpus Christi Petrochemical Company
The Denver Union Terminal Railway Company
Esperanza Pipeline Company
Ferguson-Burleson County Gas Gathering System
Frontier Pipeline
Jefferson Southwestern Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
M-C Carbon Partnership
Medicine Bow Coal Company
The Ogden Union Railway and Depot Company
Portland Traction Company
Portland Terminal Railroad Company
The St. Joseph and Grand Island Railway Company
Southern Illinois and Missouri Bridge Company
Stansbury Coal Company
Stauffer Chemical Company of Wyoming
Trailer Train Company
Uinta Development Company
Union Pacific Corporation
Union Pacific Resources Ltd.
Upland Industries Corporation
The Weatherford Mineral Wells and Northwestern Railroad Company
Arkansas & Memphis Railway Bridge and Terminal Company
Automated Monitoring and Control International, Inc.
Central California Traction Company
Chicago and Western Indiana Railraod Company
Great Southwest Railroad, Inc.
Oakland Terminal Railway
Railroad Association Insurance Limited
St. Joseph Terminal Railroad Company
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
The Belt Railway Company of Chicago
The Pueblo Union Depot and Railroad Company
Union Pacific Realty Company

RESPONDENT AMOCO PRODUCTION COMPANY

Amoco Corporation
Amoco Company
Amoco Credit Corporation
Analog Devices, Inc.
Cetus Corporation
Cyprus Mines Corporation
Gigabit Logic, Inc.
Packet Technologies, Inc.
Abbott Pipe and Supply Company
Automating Peripherals Ltd.
Blackfeet Indian Writing Co.
F M 4 Gila River Corporation
Gene Ables Excavation and General
Construction Co., Inc.
Highland Community Bank
High Life Helicopter, Inc.
Illiana Pallet Manufacturers Corporation
Illinois Venture Fund
Indecorp, Inc.
Rocky Mountain Instrument Company
Star/Adair Insulation Company
Superphone Corporation
TAC Systems
Tenco Hydro, Inc.
Trout Lake Golf and Country Club
Urban Enterprises Corporation
VSP Labs, Inc.
XMR Inc.
Watson Laboratories, Inc.

Respectfully submitted,

Daniel M. Gribbon

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Counsel of Record

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